

Supreme Court of the United States

OCTOBER TERM, 1920.

No.

HENRY S. DE REES,

Plaintiff-Appellant,

against

DAVID COSTAGUTA, MARCOS A. ALGIERS, ALEJANDRO SASSOLI, EUGENIO OTTOLENGHI, individually and as co-partners in business composing the co-partnership of David Costaguta & Company, RENADO TAFFELL and the AMERICAN-EUROPEAN TRADING CORPORATION,

Defendants-Appellees.

APPEAL FROM DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

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Bill of Complaint.

IN THE

District Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,
Plaintiff,
against

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DAVID COSTAGUTA, MARCOS A.
ALGIERS, ALEJANDRO SASSOLI,
EUGENIO OTTOLENGHI, individ-
ually and as copartners in
business composing the copart-
nership of David Costaguta &
Company, Renado Taffell and
the American-European Trad-
ing Corporation,
Defendants.

To the Honorable the District Court of the United States for the Southern District of New York: 3

AND now comes the plaintiff, Henry S. De Rees, by Messrs. Erwin, Fried and Czaki, his solicitors, and respectfully shows and avers to this Honorable Court as follows:

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FIRST: That at all of the times hereinafter mentioned the plaintiff was and now is a citizen and resident of the State of New Jersey, and that he has an office and place for the transaction of his business in the City of New York, Southern District of New York.

SECOND: That the defendants David Costaguta and Alejandro Sassoli, at all of the times hereinafter mentioned, were, and now are, citizens and subjects of the Kingdom of Italy and residents of the Republic of Argentine.

- 5 THIRD: That the defendant Eugenio Ottolenghi, at all of the times hereinafter mentioned, was and now is a citizen of the Republic of Argentine and a resident of the City of Buenos Aires, Argentine Republic.

FOURTH: That the defendant Marcos Algiers, at all of the times hereinafter mentioned, was and now is a citizen of the Republic of France, and now is a resident of the City of Buenos Aires, in the Republic of Argentine.

- 6 FIFTH: That the defendant Renado Taffell, at all of the times hereinafter mentioned, was and now is a citizen of the Kingdom of Great Britain and Ireland, and now is a resident of the City of New York, in the Southern District of New York.

SIXTH: That at all of the times as hereinafter more particularly mentioned the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and

Eugenio Ottolenghi were, and now are, copartners in business under the firm name and style of David Costaguta & Company, with offices and place for the transaction of their business at No. 1382 Calle Alsina, in the City of Buenos Aires, Republic of Argentine, and at No. 22 White Street, in the City of New York, in the Southern District of New York.

SEVENTH: That at the times as hereinafter mentioned the defendant, the American-European Trading Corporation, was and now is a corporation organized under and existing by virtue of the laws and a citizen of the State of New York, and having its office and place for the transaction of its business at No. 1270 Broadway, in the City of New York, in the Southern District of New York; and that, as the plaintiff is informed and verily believes, that one Leon Grumet is the President thereof and the defendant Renado Taffell is the Secretary and Treasurer thereof; and that said Leon Grumet is the agent and duly constituted representative in the City of New York, in the Southern District of New York, under and by virtue of a duly authorized Power of Attorney, of the defendant, the copartnership firm of David Costaguta & Company. 8

EIGHTH: And the plaintiff doth further complain and aver: That in or about the month of April, 1915, the defendants David Costaguta and Marcos Algiers then were copartners in business under the firm name and style of David Costaguta & Company, with an office and place for the 9

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transaction of their business in the City of Buenos Aires, Republic of Argentine, and at that time said David Costaguta and Marcos Algiers duly made and entered into a contract in writing with the plaintiff wherein and whereby in substance and effect a copartnership was created between the plaintiff and said partnership of David Costaguta & Company, for the particular and exclusive purpose, and no other, of buying and selling hosiery, manufactured in the United States and Europe, in the name of David Costaguta & Company, the said David Costaguta & Company to advance the capital required therefor and the plaintiff to buy, sell, manage and direct the said copartnership business, it being further agreed that the profits thereof should be divided one-half to the plaintiff and one-half to said David Costaguta and Marcos Algiers, and that the losses, if any, should be equally borne and sustained.

NINTH: That from about the said month of April, 1915, to and including the 31st day of October, 1917, the business of said copartnership between the plaintiff and the said David Costaguta & Company, as thus constituted, continued with success in the operations thereof, with the result that on said 31st day of October, 1917, the said David Costaguta and Marcos Algiers represented and acknowledged to the plaintiff that he had to his credit, on the books of said copartnership, a cash balance of 31,253.99 Argentine pesos, and that the merchandise, the property of said copartnership, then on hand and remaining unsold, and in which your orator had a one-half interest, was of the value of 302,332.18 Argentine pesos.

TENTH: That on or about the said 31st day of October, 1917, the partnership composed of David Costaguta and Marcos Algiers was reconstituted by the admission, as partners therein, of the defendants Alejandro Sassoli and Eugenio Ottolenghi, and the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, as partners composing the firm of David Costaguta & Company, thereupon duly assumed all of the liabilities and took over all of the assets of the partnership as theretofore composed of the said David Costaguta and Marcos Algiers, and the copartnership between the plaintiff and the said David Costaguta and Marcos Algiers was then and there terminated and came to an end.

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ELEVENTH: That thereafter and on the 1st day of November, 1917, at the City of Buenos Aires, in the Republic of Argentine, the plaintiff entered into a contract in writing with the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi as partners then constituting the firm of David Costaguta & Company, wherein and whereby it was agreed between said David Costaguta & Company on the one hand and the plaintiff on the other that a copartnership should be and thereby was created and established between them in substance and effect upon the following terms and conditions:

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(a) That a special section, business and enterprise shall be established, to be conducted on the premises and in the name of David Costaguta & Company, in the City of Buenos Aires, Argentine

Republic, and elsewhere, as may be agreed upon, for the purchase and sale of hosiery and any other articles of knit goods or any other kind of merchandise which it may, by mutual accord, be agreed to buy, sell or deal in, said special section to be known and called the "Hosiery Section."

- (b) That the plaintiff was to have the exclusive charge of and the right to make all the purchases of the merchandise dealt in, except, that the said David Costaguta & Company reserved the right to require the plaintiff to submit for approval all purchases that he made while in Buenos Aires, but
17 that as to all purchases the plaintiff made while in North America or Europe he was to have complete liberty of action within the limits which said David Costaguta & Company may fix in writing.

(c) That the plaintiff shall have exclusive charge of the sale of said merchandise purchased in the business of said copartnership, said David Costaguta & Company reserving the right only to pass upon the credits and terms of sale.

- (d) That only such expenses shall be charged to the business of said copartnership as directly belonged to it, that is to say, the salary of its own employees directly and exclusively concerned in the conduct of its business, travelling expenses, commission paid to brokers, telegrams, postage and
18 such other incidental expense directly connected with the business of said copartnership, whereas, it was agreed that the expense of rent, light, heat, licenses, taxes, salaries of bookkeepers, clerks or accountants engaged in and about the keeping of

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the books, records and accounts of said copartnership, porters and laborers who handle, pack, unpack, load and unload, carry or otherwise handle the merchandise of the copartnership, shall be charged exclusively to the individual account of said David Costaguta & Company.

(e) That on the 31st day of October in each year, the accounts and transactions of said copartnership shall be balanced, and the profits or losses, as the case may be, shall then be ascertained and determined and in so doing such depreciation in the market value of the merchandise shall be made as may be mutually agreed upon and as shall be found to be convenient or necessary to be made and such bad or doubtful debts shall be charged off as may, by mutual accord, be agreed upon. 20

(f) That from the net profits so mutually ascertained there shall be deducted and paid to said David Costaguta & Company, a sum equal to 6% per annum interest on the amount of the net capital supplied by David Costaguta & Company to and actually used by, the copartnership in the business of the said Hosiery Section, said interest calculations and ascertainment of and capital employed to be made semi-annually by a semi-annual account current evidencing all advances and disbursements made by David Costaguta & Company to or for the benefit of the copartnership and all moneys received by the said David Costaguta & Company belonging to said copartnership together with interest at 6% per annum debited on said advances and credited on said receipts, and in case the profits at the end of any one year are insufficient to repay to said 21

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David Costaguta & Company the net amount of said capital advanced and so ascertained, that then said balance shall be carried over into the succeeding balance.

(g) That all net profits so mutually ascertained and determined as hereinbefore averred in subdivision (f) of this Bill of Complaint, shall be divided 55% thereof to said David Costaguta & Company and 45% thereof to the plaintiff and all losses incurred shall be divided, sustained and borne in the same proportion.

(h) That the plaintiff shall be entitled to draw and be paid monthly, from the funds of said copartnership, a sum equal to 1500 Argentine pesos, which shall be charged to his personal account and he shall, in addition thereto, be entitled to draw and be paid from time to time 50% of his share of all such net profits as and when ascertained and determined, leaving 50% of his net profits on deposit with said David Costaguta & Company, on which it was to pay the plaintiff 6% interest per annum; and which deposit they were to hold as security, so far as provided for under the terms of the contract, and to be utilized by it as capital advanced to the copartnership and to be accounted for and paid over to the plaintiff at and on the termination of said contract relation.

(i) That the plaintiff shall devote his undivided time and attention to the business of said copartnership and he will not directly or indirectly, participate in any other commercial business nor shall he be interested in any other commercial business

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foreign to the business of the said copartnership; and in the event of a breach upon the part of the plaintiff of this provision of said contract, the said David Costaguta & Company reserved the right to declare forfeited the profits earned by the plaintiff in the fiscal year in which said breach of this covenant occurred.

(j) That both parties reserved the right, upon three months' written notice by registered mail, to terminate said copartnership and revoke said contract, and in the absence of the plaintiff from Buenos Aires said David Costaguta & Company, should they desire to terminate said contract, will do so by cable, addressed to the plaintiff at the last address indicated by him.

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(k) That in the event the plaintiff or said David Costaguta & Company elected to and did terminate said copartnership and revoke said contract, either of said parties had the right to demand that the affairs of said copartnership shall be jointly liquidated by the sale of the merchandise on hand, in the Custom House, in transit, or in course of manufacture and pertaining to the business of said copartnership, and the plaintiff agreed to continue his co-operation, so far as necessary, in and about said liquidation up to the time when all of the said merchandise shall have been entirely sold, at which time adjustments were to be made as to the value of merchandise taken over, if any, or bad debts, as might be fixed by mutual accord, as in case of the ascertainment of profits under the provisions of annual settlements as hereinbefore set out in subdivision (e) of this paragraph of the Bill of Com-

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plaint, and thereupon said David Costaguta & Company were to take over and become the sole owner of all of the assets of the copartnership, paying to the plaintiff the sum realized as the result of said liquidation, to which the plaintiff is entitled in said copartnership property so liquidated, in four equal installments; the first installment immediately in cash and the remaining three installments in six, twelve and eighteen months thereafter together with interest thereon at 6% per annum.

- 29 (1) That in the event either party shall terminate said copartnership and revoke said contract by notice and in the further event a liquidation of said merchandise and property of said copartnership is not demanded by either party as provided by the article of said contract numbered 11, as averred in sub-division (k) of paragraph "Eleventh" of this Bill of Complaint, and said David Costaguta & Company desires to become the sole owner of the business of said copartnership and its assets without liquidation, then and in those events, a balance shall be mutually arrived at and determined as provided in Article "5" of said contract and as averred in sub-division (e) of paragraph "Eleventh" of this Bill of Complaint, relative to adjustment of merchandise values and credits, and the said David Costaguta & Company
- 30 shall thereupon take over all of the assets and assume all of the liabilities and pay to the plaintiff the amount so found to be due to him in four equal installments, the first immediately in cash and the remaining three installments in six, twelve and eighteen months thereafter, together with interest thereupon at 6% per annum.

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(m) That in the event of the death of the plaintiff the said David Costaguta & Company being the surviving partner, shall thereupon liquidate the entire stock of merchandise of the copartnership within one year from the day of such death and close and balance the accounts thereof and pay to the heirs of the plaintiff the amount so found to be due to him in four equal installments, the first immediately in cash and the remaining three in six, twelve and eighteen months thereafter, together with interest at 6% per annum.

(n) That in order to avoid possible confusion it was agreed that the business of said copartnership was to have no relation to the production of hosiery of the factory of David Costaguta & Company known as "La Tejedora." 32

TWELFTH: And the plaintiff further avers that on said 1st day of November, 1917, the copartnership, composed of the plaintiff and the partnership of David Costaguta & Company as composed of the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, took over all of the assets and assumed all of the liabilities of the copartnership theretofore existing and composed of the plaintiff and the said David Costaguta & Company, consisting of David Costaguta & Marcos Algiers. That of the assets thus taken over the merchandise on hand and in stock alone was of the value of 302,332.18 Argentine pesos, in which the plaintiff had a community interest to the extent of 45% thereof exclusive of a cash balance to the credit of his capital account of 31,253.99 Argen- 33

tine pesos, making a total contribution of capital to his credit in said copartnership of not less than 167,293.47 Argentine pesos.

THIRTEENTH: That on or about the 20th day of November, 1917, the plaintiff, in pursuance of the business of the copartnership, and for the purpose of purchasing and selling its merchandise, left the City of Buenos Aires, and since his arrival in the City of New York, on the 28th day of December, 1917, he has continuously resided in the United States, engaged in the business of said copartnership until subsequent to the termination of said contract of partnership. That all of the books, records, documents and accounts of the business of said copartnership have been kept by said David Costaguta & Company in the City of Buenos Aires, by its bookkeepers and accountants, except as hereinafter averred, and the plaintiff has no knowledge or information as to the entries in said books kept in the City of Buenos Aires, or of the fiscal accounts and transactions of the business of said copartnership except as the said David Costaguta & Company have advised the plaintiff by correspondence and statements rendered, to which reference will hereafter be more particularly made, and the plaintiff never has had any detailed accounts or record of any of the transactions of the copartnership, either

as to purchases, sales or otherwise, as the same may be entered upon the copartnership books in Buenos Aires, although he has frequently demanded the same and that said David Costaguta & Company have frequently refused, failed and neglected to furnish the plaintiff with such detailed informa-

tion which he as a partner was entitled to demand and receive.

FOURTEENTH: That from said 1st day of November, 1917, to and including the 31st day of October, 1918, the plaintiff, on behalf of said copartnership, purchased in the United States, merchandise of the value in excess of 2,000,000 Argentine pesos, which, with the merchandise on hand on November 1st, 1917, of the value of 302,332.18 Argentine pesos, was, in part, sold by the plaintiff during the year between November 1st, 1917, and October 31st, 1918, and there remained unsold on said 31st day of October, 1918, in the City of Buenos Aires, as stated and represented by said David Costaguta & Company to the plaintiff, merchandise of the value of 1,321,993.26 Argentine pesos. That the said David Costaguta & Company in a statement of account rendered to the plaintiff as of October 31st, 1918, further stated and represented to the plaintiff, that the net profits earned in the business of said copartnership during said year beginning November 1st, 1917, and ending October 31st, 1918, aggregated 243,270.17 Argentine pesos, but that said profits were not ascertained by mutual accord or determined as provided by said contract of copartnership, and did not justly, correctly or accurately represent the profits actually earned in said year. That the plaintiff objected to the statement of said profits so rendered to him by said David Costaguta & Company and protested against the balance as shown by said statement and the items as therein contained, but that the said David Costaguta &

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Company failed, refused and neglected to correct, alter or amend the same.

FIFTEENTH: That the statement rendered by the said David Costaguta & Company to the plaintiff as of the 31st day of October, 1918, purported to credit to the plaintiff's capital account the sum of 54,735.79 Argentine pesos as representing one-half of the amount claimed to be the share of the plaintiff in said profits ascertained of that date, which, together with the sum of 15,552.47 Argentine pesos claimed by said David Costaguta & Company to be the balance remaining to the plaintiff's credit in his capital account, after withdrawals during said year, represented a total cash capital on November 1st, 1918, of 70,288.26 Argentine pesos, exclusive of the plaintiff's community interest of 45% in the merchandise claimed to be on hand and unsold on that date, aggregating 1,321,993.26 Argentine pesos.

SIXTEENTH: That shortly after the 28th day of December, 1917, the date of the arrival of the plaintiff in the City of New York, he opened and established an office and place for the transaction of the business of said copartnership at No. 395 Broadway, and subsequently transferred the same to No. 22 White Street, in the City of New York, in the Southern District of New York, and from time to time the plaintiff purchased and placed in said premises and in warehouses in said City and District, merchandise belonging to said copartnership, so that, on the 31st day of October, 1918, said copartnership held, in said City of New York, merchandise of the value of about 750,000 besides out-

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standing contracts for the delivery to it of additional merchandise, due from time to time during the year 1919, aggregating approximately \$1,000,000, of all of which, from time to time and prior to the 31st day of October, 1919, there was shipped to the copartnership for sale in Buenos Aires, merchandise of the value of about \$500,000, which has in large part been sold in Argentine, Chili, Bolivia, Uruguay and elsewhere, at large net profits to said copartnership. That from October 31st, 1918, to the date of the filing of this Bill of Complaint, the plaintiff sold merchandise for and on behalf of said copartnership in the United States of America, aggregating many hundreds of thousands of dollars in value and realized upon the sale thereof net profits of about \$125,000, all of which said merchandise was sold in the name of David Costaguta & Company and the proceeds thereof was received for the account of said copartnership by said David Costaguta & Company, except as hereinafter more particularly averred.

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SEVENTEENTH: That at various times between the date of the arrival of the plaintiff in the United States of America and the 31st day of October, 1919, numerous, serious and irreconcilable differences arose between the plaintiff and the said David Costaguta & Company, regarding the conduct and management of the business of said copartnership. The said David Costaguta & Company refused to pay for merchandise which the plaintiff purchased and contracted for in the name and for the benefit of said copartnership; it sent to the United States of America different representatives with powers of

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attorney and instructions to supersede and it did largely supersede the plaintiff in the conduct and management of the business of said copartnership, depriving the plaintiff of the right to sell said merchandise of said copartnership to its best interest, said representatives, over the objections and protests of the plaintiff, selling said merchandise at prices largely below the market value thereof; that it failed to keep in the City of New York accurate books of account of the transactions in and about the purchase and sale of said merchandise; that it unnecessarily became involved in litigations growing out of the business of the copartnership and otherwise, causing it loss and damage; that it refused to permit the plaintiff to direct the sale of said merchandise in this country to the end that the best prices could not be obtained therefor, that it failed, refused and neglected, although frequently demanded so to do, to give to the plaintiff an accounting in detail of the transactions of the copartnership for the business of the year 1918, and never has, at any time, given the plaintiff the semi-annual account current provided for by said contract and as averred in paragraph "Eleventh," subdivision (f) of this Bill of Complaint, although duly demanded so to do.

48 EIGHTEENTH: That by reason of said differences and dissensions and the inability of the plaintiff to work in harmony and good will with the said David Costaguta & Company and its representatives, who from time to time attempted and did interfere with and superseded the plaintiff in the conduct of the affairs of said copartnership, and by reason of its

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breaches of said contract, the plaintiff did, on the 22nd day of August, 1919, give ninety days' formal written notice by mail to the said David Costaguta & Company, addressed to it at Buenos Aires, Argentine Republic, that the plaintiff elected to and did terminate said copartnership, said termination to take effect on and as of the 22nd day of November, 1919. That thereafter, and on September 19th, 1919, the said David Costaguta & Company acknowledged the receipt of said notice of cancellation and accepted the termination of said contract to take effect on and as of the 22nd day of November, 1919. That thereafter and on the 10th day of November, 1919, the plaintiff, as provided by said contract of copartnership, elected to and did demand a compelte liquidation in pursuance of Article "ii" of said contract and as averred in subdivision (k) of paragraph "Eleventh" of this Bill of Complaint, and gave to said David Costaguta & Company formal written notice to that effect, to which, on November 14th, 1919, the said David Costaguta & Company formally agreed in writing.

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NINETEENTH: That at various times between the 31st day of October, 1919, and the date of the filing of this Bill of Complaint, the plaintiff duly demanded of the said David Costaguta & Company an accounting and detailed statement of the transactions of the business of the copartnership for the year beginning November 1st, 1918, and ending October 31st, 1919, and as of said last mentioned date, as provided by said contract, and evidencing the profits made and earned in said business during said period, but that said David Costaguta & Com-

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pany has failed, refused and neglected so to do, although frequently recognizing its obligation so to do, giving pretenses, evasion and subterfuges for its failure to comply with the plaintiff's demand; that the plaintiff has demanded the payment to him of the money due to him and carried as capital to his credit from the profits earned in the year 1917 to 1918, and 1918 to 1919, but said David Costaguta & Company has refused so to do, although there is admittedly a large amount due to the plaintiff and to his credit on the books of the copartnership.

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TWENTIETH: That on or about the 22nd day of November, 1919, there remained and was on hand and unsold in the City of New York, in the Southern District of New York, merchandise belonging to said copartnership of the value of about \$100,000, which said merchandise was in the premises No. 22 White Street and various warehouses in said City and District, in the name and in the possession of said David Costaguta & Company, holding the same for said copartnership, which the plaintiff attempted to sell and liquidate for the best interests of said copartnership, but that the said David Costaguta & Company refused to permit the plaintiff to sell said merchandise to the best advantage, and endeavored to and did sell large quantities thereof at little or no profit, insisting that the merchandise be speedily disposed of regardless of the prices received therefor, and did sacrifice the same at prices much below their market value. That during the period between November 22nd, 1919, and the 1st day of February, 1920, the said copartnership had

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large funds to its credit in bank in the name of said David Costaguta & Company, and had large outstanding accounts due to it for the sale of merchandise theretofore and in that period made, said funds being deposited in the following named banks: The National City Bank, the Foreign & American Banking Corporation, the Citizens Central National Bank, The Italian Discount & Trust Company, The Guaranty Trust Company and the Central Trust Company of New Jersey. That the funds belonging to said copartnership so held by said David Costaguta & Company were commingled with funds of David Costaguta & Company arising from and out of the transactions other than those of said copartnership. That said David Costaguta & Company had title, possession, custody and control in the City of New York, Southern District of New York, of large assets consisting of merchandise other than the merchandise belonging to the copartnership and had other value assets in said City and District, the exact nature and description of which the plaintiff is at present unable to more particularly specify, but which were purchased and acquired by said David Costaguta & Company with the commingled funds belonging to the copartnership and said David Costaguta & Company. That during the period between the 1st day of May, 1919, or thereabouts, and the 15th day of February, 1920, or thereabouts, the defendant Eugenio Ottolenghi, a member of the firm of David Costaguta & Company, was present in the City of New York in said District, and was in active charge, management and control of all of its affairs.

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TWENTY-FIRST: That in or about the month of January, 1920, the said David Costaguta & Company, for the purpose of defrauding the plaintiff and intending thereby to thwart him in the assertion of his just rights and remedies, and to prevent him from receiving and collecting from the property of said copartnership the moneys justly due to him, conceived the scheme and design of organizing a corporation under the laws of the State of New York, to which it would transfer and convey all of the property, assets and effects of said copartnership and all of the property, assets and effects of the said David Costaguta & Company, held in the City of New York, aforesaid. That the plaintiff, between January 6th and 29th, 1920, had reported to said David Costaguta & Company at New York, sales of sixty-five cases of hosiery to one Weil, Feinberg & Co., Inc., a customer with whom he was in negotiation for the sale thereof. That said sales were never in fact consummated, and for which merchandise he had instructed the New York office of David Costaguta & Company, in whose actual custody the same was held for the account of said copartnership, to make out invoices to said Weil, Feinberg & Co., Inc., and deliver the same to the plaintiff, and said invoices were so made out and delivered to him, but that said invoices were never rendered by the plaintiff to said Weil, Feinberg & Co., Inc., with whom negotiations for said sales failed. That the plaintiff being cognizant of the fraudulent scheme and conspiracy aforesaid, on the part of said David Costaguta & Company, to place the copartnership assets beyond his copartnership control and to prevent the same, so far as he was

Bill of Complaint.

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able, took over, for the account of said copartnership, and stored in his own name, the said merchandise so invoiced to said Weil, Feinberg & Co., Inc. That the plaintiff has sold in regular course of trade 32 cases of said merchandise for the sum of \$20,840.65, which includes a profit thereon of \$5,000, and he still holds thirty-three cases thereof unsold, all of which the plaintiff holds for the benefit of said copartnership and subject to the accounting herein. That hereto annexed, marked Exhibit "A," is a complete and detailed schedule of said sixty-five cases of merchandise evidencing those still unsold and those sold, the names and addresses of the persons to whom sold and the amounts realized therefor, to which reference is made with the same force and effect as though herein set out *in extenso*.

62

TWENTY-SECOND: That, in pursuance to the fraudulent scheme and conspiracy as aforesaid, the said David Costaguta & Company on or about the 31st day of January, 1920, caused to be incorporated and organized, the defendant, the American-European Trading Corporation, under the laws of the State of New York, with dummy incorporators and dummy directors, the incorporators named in the Certificate of Incorporation being Robert Lowenstein, Sr., Arthur Delafield Smith, Vinnie I. Jones, Nathan Levy and Alexander Gritzner, each of whom, for the purpose only of qualifying them as incorporators, agreed in said Certificate of Incorporation to subscribe for and take one share of its capital stock. That said defendant, the American-European Trading Corporation, was organized with an authorized capital stock of \$10,000, divided

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into shares of the par value of \$100 each, and the amount of capital with which it was to begin business was \$500; that the Articles of Incorporation thereof provided that its directors need not be stockholders; that the number of its directors were three and the directors mentioned in its Articles of Incorporation for the first year were said Robert Lowenstein, Sr., Arthur Delafield Smith and Vinnie I. Jones. That the plaintiff is informed and verily believes, all of the capital stock of said defendant, the American-European Trading Corporation, is now owned and held by the said David Costaguta & Company, to whom it was issued in alleged consideration of the transfers to it by said David Costaguta & Company as hereinafter averred.

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TWENTY-THIRD: That immediately after the organization of said defendant, the American-European Trading Corporation, the said David Costaguta & Company, in furtherance of said fraudulent scheme and conspiracy, and on or about the 1st day of February, 1920, and thereafter and without the consent of your orator, transferred, conveyed and set over to the defendant, the American-European Trading Corporation, all of the merchandise, property, money, accounts, choses in action and other assets of the copartnership, as well as all of the merchandise, property, money, accounts, choses in action and other assets belonging to the said David Costaguta & Company. That said transfers were so made in bulk, not in the usual course of trade in liquidation of the copartnership assets, without any actual consideration paid

therefor otherwise than the issuance, by said defendant corporation, of all of its capital stock to said David Costaguta & Company. That said David Costaguta & Company closed and discontinued all of its bank accounts and the large sums of money so withdrawn, were deposited in part to the credit of the said defendant corporation and part in the name of the defendant Renado Taffell, who since said transfer, has been disbursing the same in his individual name for the benefit and account of said defendant corporation and the said David Costaguta & Company.

TWENTY-FOURTH: That there is now in the possession, custody and control of said defendant corporation, in the Southern District of New York, twenty-two cases of merchandise consisting of hosiery of the value of about \$15,000, the property of the copartnership, all of the accounts outstanding due to the copartnership on the sale of hosiery aggregating many thousand dollars; nine thousand and ninety-one hides of the value of about \$150,000 acquired by said David Costaguta & Company, with the commingled funds of the copartnership, besides other property, the character and description of which the plaintiff is at the present time unable to particularly specify. That, in addition to the property so fraudulently transferred to the defendant, the American-European Trading Corporation, there was also transferred to it by said David Costaguta & Company the following contracts, claims and choses in action, the property of said copartnership: A certain contract for the sale and delivery of 20,000 dozen of hosiery of which 19,500 dozen

- remain undelivered of the contract price of \$20,900 made with the Loudon Hosiery Mills, of Loudon, Tennessee; a contract for the sale and delivery of 20,000 dozen of hosiery, of which 11,000 dozen remain undelivered, of the contract price of \$14,850, and a contract for the sale and delivery of 10,000 dozen of hosiery, of which 900 dozen remain undelivered of the contract price of \$1,665 made with the Sweetwater Hosiery Mills of Sweetwater, Tennessee; a contract for the sale and delivery of 20,000 dozen hose, of which 12,000 dozen of the contract of \$26,400 remain undelivered, made with the Aycock Hosiery Mills of South Pittsburgh, Tennessee.
- 71 A contract for the sale and delivery of 15,000 dozen hose, of which 10,500 dozen remain undelivered, of the contract price of \$19,925, made with F. Y. Kitzmiller of Reading, Pennsylvania. A claim for the breach of a contract for the purchase and sale of hose, made with the Ellis Hosiery Company of Philadelphia, Pennsylvania, said claim aggregating about the sum of \$1,500; a claim against the Allen Hosiery Company of Philadelphia, Pennsylvania, for the breach of a contract for the non-delivery of about 7,000 dozen of hose, said claim aggregating the sum of about \$18,000. A claim for damages for the non-delivery of 30,000 dozen hose, against A. H. Rumberger of Philadelphia, Pennsylvania, aggregating the sum of \$15,000.
- 72 A claim for damages for breach of warranty growing out of the purchase and sale of 2,000 dozen hose, aggregating \$2,250, against Thompson Brothers of Milroy, Pennsylvania; a contract for the sale and delivery of 22,000 dozen hose, of which 20,000 dozen remain undelivered, of the contract price of \$37,000, made with

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the Rockwood Hosiery Mills of Rockwood, Tennessee. A claim for the breach of a contract for the sale and delivery of 20,000 dozen hose, for failure to deliver the same, aggregating \$8,500, against the Harriman Hosiery Mills, Harriman, Tennessee. A claim against the Colonial Knitting Mills, Inc., of Philadelphia, Pennsylvania, aggregating \$8,500, for failure to deliver 8,500 dozen hose. That all of said contracts for the purchase and sale of hose, as aforesaid, were made in the name of the said David Costaguta & Company and for the benefit of said copartnership and, as to a number of said contracts and claims, suits have been instituted and are pending to recover damages sustained by said partnership for the breaches of said contracts.

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And the plaintiff charges that all of the property, assets, money and effects now held by the defendants and each of them, and particularly the capital stock of the defendant, the American-European Trading Corporation, held by and in the name of the defendants, composing the partnership of David Costaguta & Company, the situs of which is in the City of New York, in the Southern District of New York, is charged with a trust and subject to the claim and lien of the plaintiff, and the plaintiff further charges that the defendants and each of them took said property charged with a trust in favor of the plaintiff and hold the same with knowledge and notice of the copartnership, lien and claim of the plaintiff and with knowledge and notice of the fact that said property was transferred with the preconceived intent and design upon the part of the said David Costaguta & Company to hinder, delay and defraud the plaintiff and to impede him

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in the enforcement of his legal and equitable rights and remedies.

WHEREFORE, the plaintiff respectfully prays this Honorable Court that a decree be made and entered herein, in due course, which shall provide:

77 1st. That the copartnership created under and by virtue of the contract between the plaintiff and the said David Costaguta & Company, as hereinbefore averred, and dated the 1st day of November, 1917, be declared dissolved, and that all of the property, assets and effects thereof wheresoever situate, lying and being, be liquidated, sold and disposed of and converted into cash with all due and convenient speed and to the best interests of said copartnership.

78 2nd. That the said David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, composing the firm of David Costaguta & Company, account to the plaintiff for all of their acts, conduct and transactions in and about the business of said copartnership, to the end that it be established, what, if any, sum or sums there be and remain due and unpaid to the plaintiff from said David Costaguta & Company, in and about the business and transactions of said copartnership, and in the adjustment of their respective claims in said copartnership business.

3rd. That the plaintiff be decreed to have a lien upon all of the property, assets and effects of the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individ-

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ually and as partners composing the firm of David Costaguta & Company, and on all of the property, assets and effects of the American-European Trading Corporation into which the copartnership assets have been converted, or with which the said assets have been commingled, and that all of the property, assets and effects, aforesaid, of the said defendants and each of them, and particularly all of the capital stock of the said American-European Trading Corporation standing upon its books, in the name of the said David Costaguta & Company, or in the name of any of its individual members, or in the name of any other person, firm or corporation, be declared charged with a trust in favor of the plaintiff.

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4th. That a Receiver *pendente lite* be appointed herein of all of the property, assets and effects, of whatever kind, character, nature or description and wheresoever situated, of the copartnership composed of the plaintiff and the partnership of David Costaguta & Company, and of all of the property, assets and effects of the partnership of David Costaguta & Company, composed of the said David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, which are or have been commingled with the assets of said copartnership and of all of the property, assets and effects of the defendant, the American-European Trading Corporation, and of the capital stock thereof, and regardless as to whether the said capital stock or any of the property of any of the defendants or of said copartnership is held in the name of said defendants or in the name of any other person, firm or

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corporation for them; that said Receiver take, hold and administer the property of and liquidate the affairs of the said copartnership; that said Receiver take and hold, subject to the further order and judgment of this Court, the property, assets and effects of the said David Costaguta & Company and the American-European Trading Corporation, into which the property, assets and effects of the said copartnership shall be traced, and take and hold, subject to the like order and judgment of this Court, such property and effects held by each and all of the defendants to answer to any judgment that may be rendered against them in this suit.

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5th. That the plaintiff and each and all of the defendants herein, their agents, servants and employees, and each and every other person, firm or corporation having possession, custody or control of any of the property of the said copartnership, or of the property of any of the defendants, be directed to deliver the same to said Receiver, and that all of the defendant copartners and each other person, firm or corporation defendant, holding any such property, be restrained and enjoined during the pendency of this suit, or until the further order and judgment of this Court, from in any manner or in any form whatsoever, transferring, assigning or disposing of any of the property of said copartnership, otherwise than to deliver the same to said Receiver.

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6th. That a temporary restraining order be issued herein, which shall provide that said David Costaguta, Marcos Algiers, Alejandro Sassoli and

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85

Eugenio Ottolenghi, individually and as copartners composing the firm of David Costaguta & Company, Leon Grumet as the agent and attorney in fact of the said David Costaguta & Company, the defendant Renado Taffell, the servants, agents or attorneys of said David Costaguta & Company, or of the individual members thereof, the American-European Trading Corporation, its officers, agents, servants and employees, or any other person, firm or corporation having possession, custody and control of any of the property of the copartnership composed of the plaintiff and said David Costaguta & Company, or having possession, custody and control of the property of the said defendant, American-European Trading Corporation, be and they hereby are jointly and severally enjoined and restrained, pending the hearing and determination upon the return of a rule *nisi*, from in any manner or form whatsoever, interfering with, assigning, transferring or disposing of or of removing from the jurisdiction of this Court any property of any kind, character, nature or description whatsoever and wheresoever situate belonging to the defendants or either of them, or belonging to the said copartnership.

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7th. And the plaintiff does further pray the Court's most gracious writ of subpoena directed to the defendants and to each of them, requiring them and each of them to answer unto this Bill, on a day therein to be named, and may it please your Honors to grant unto this plaintiff such other and further relief in the premises, as the nature of his case may require and to the Court may seem meet

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Bill of Complaint.

and appropriate and in accordance with equity and good conscience, and the plaintiff further prays that in respect of such of the defendants as are not found in the District, the Court will make an order setting forth that the plaintiff is claiming an interest in and lien upon property, the situs of which is now in this District and require such defendants as may not thus be found in this District, to demur, plead or answer to this Bill at a day therein to be named, in accordance with the statute in such case made and provided.

AND the plaintiff will ever pray,

FREDERICK M. CZAKI,
ERWIN, FRIED & CZAKI,

Solicitors for the plaintiff,
Office and Post Office Address,
15 William Street,
New York City.

HENRY S. DE REES.

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no bill		660.00	2684	on hand				
			5094	PC Vafopulo				130.13
Jan. 14	19		5005	on hand	"	4	115	475.55
		690.00	5025	"				
		690.00	1191	"				
		690.00	1193	"				
		690.00	1207	"				
		690.00	1192	"				
		690.00	1283	"				
		690.00	1190	"				
		690.00	1282	"				
		690.00	11	"				
		690.00	12	"				
		690.00	43	"				
		690.00	33	"				
		690.00	34	"				
		690.00	50	"				
		690.00	1290	"				
		690.00	1289	"				
		690.00	891	"				
		690.00	87	"				
Jan. 20	27	792.00	1292	Wm B. Flesh	Jan. 22	111	1020.00	228.00
"	28	330.00	2784	"	" 22	110	255.00	57.00
"	29	122.10	1203	"	" 22	106	425.00	95.00
"	30	198.00	1204	"	" 22	106	157.25	35.15
"	30	396.00	1201	"	" 22	109	255.00	57.00
"	31	660.00	1206	PC Vafopulo	Feb. 4	113	510.00	114.00
"	32	382.80	1205	Wm B. Flesh	Jan. 22	114	850.00	190.00
"	28	385.25	1209	PC Vafopulo	Feb. 4	107	493.00	111.80
"	29	798.60	1151	"	Feb. 18	115	556.35	171.10
		690.00	203	on hand		119	1028.50	222.90
		690.00	1187	"				
		690.00	823	not del.				
		690.00	1186	on hand				
		690.00	45	"				
		690.00	46	"				
		690.00	49	"				
		690.00	106	"				
no bill			5023	"				
"			5037	"				

The foregoing bill of complaint is marked filed United States District Court, Southern District of New York, March 10, 1920.

Exhibit A.

Date of Bill of DC & Co. to Weill, F & Co.	Bill No.	Amt of Invoice billed to Weill, F & Co.	Amt of Inv of goods on hand at price billed to Weill, F & Co.	Case No.	Sold by Plaintiff to	Date of Pff's Bill	No. of Pff's Bill	Amt realized by Pff.	Difference in price as billed to Weill, F & Co. & realized by Pff.
Jan. 5	7	381.00		1179	Wm B. Fleisch	Jan. 6	101	510.00	120.00
" "	"	381.00		1180	63 Leonard	" 6	102	510.00	129.00
" "	"	381.99		1181	N. Y. City	" 6	103	510.00	129.00
" "	"	381.00		1182	"	" 6	103	510.00	129.00
" "	"	381.00		1183	"	" 6	103	510.00	129.00
" "	"	381.00		1184	"	" 6	103	510.00	129.00
" "	"	381.00		1185	"	" 6	103	510.00	129.00
" "	"	381.00		1186	"	" 6	103	510.00	129.00
" "	"	381.00		1187	"	" 6	103	510.00	129.00
" "	"	381.00		1188	"	" 6	103	510.00	129.00
Jan. 13	17a	1270.00		204r	Everet Heary Co. on hand	" 13	104	1480.00	210.00
" 14	16		542.80	414	PC Vafopulo	Feb. 4	113	777.00	234.00
" "	18			423	"	" 4	113	777.00	234.00
" "				433	"	" 4	113	777.00	234.00
" "				520	"	" 4	113	777.00	234.00
" "				413	"	" 4	113	777.00	234.00
" "				408	"	" 4	114	777.00	234.00
" "				2835	not delivd.	" "	"	"	"
" "				2908	Wm B. Fleisch	Jan. 20	105	850.00	190.00
" "				2785	"	" 20	105	850.00	190.00
" "				2897	on hand	" "	"	"	"
" "				2770	"	" "	"	"	"
" "				2833r	Wm B. Fleisch	Feb. 18	120	850.00	190.00
" "				2891	PC Vafopulo	" 4	114	850.00	190.00
" "				2684	on hand	" "	"	"	"
" "				5094	PC Vafopulo	" 4	115	475.55	139.15
" "				5005	on hand	" "	"	"	"
no bill				5025	"	" "	"	"	"

Bill of Complaint.

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Subpoena.

EQUITY SUBPOENA

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To David Costaguta, Marcos A. Algiers, Alejandro Sassoli, Eugenio Ottolenghi, individually and as co-partners in business composing the co-partnership of David Costaguta & Company, Renado Taffell and the American-European Trading Corporation,

GREETING :

YOU ARE HEREBY COMMANDED to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Henry S. De Rees, and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you & each of you of Two Hundred and Fifty Dollars (\$250). 98

WITNESS, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 10th day of March, in the year one thousand nine hundred and twenty and of the Independence of the United States of America the one hundred and forty-fourth. 99

ALEX. GILCHRIST, JR.,
Clerk.

ERWIN, FRIED & CZAKI,
Plaintiff's Sol'rs.

100

Bill of Complaint.

The defendants are required to file their answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken *pro confesso*.

ALEX. GILCHRIST, JR.,

(Seal.)

Clerk.

101

The foregoing subpoena is marked filed United States District Court, Southern District of New York, March 11, 1920.

Marshal's Returns.

I HEREBY CERTIFY, that, after due and diligent search, I am unable to find the within named David Costaguta, Marcos A. Algiers, Alejandro Sassoli or Eugenio Ottolenghi, in my district.

THOMAS D. McCARTHY,

U. S. Marshal,

S. D. N. Y.

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Dated, New York, March 11, 1920.

U. S. District Court,
filed

March 11, 1920.

S. D. of N. Y.

Bill of Complaint.

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I HEREBY CERTIFY, that on the 10th day of March, 1920, at the City of New York, in my district, I personally served the within subpoena in equity upon the within named defendant Renado Taffell, by exhibiting to him at #22 White St., N. Y. City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

Dated, March 11, 1920.

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I HEREBY CERTIFY that on the 10th day of March, 1920, at the City of New York, in my district, I served the within subpoena in equity upon the within named defendant David Costaguta and Company, by exhibiting to Leon Grumet, as agent and attorney in fact, at #22 White St., N. Y. City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York. 105

Dated, March 11, 1920.

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Bill of Complaint.

I HEREBY CERTIFY that on the 10th day of March, 1920, at the City of New York, in my district, I served the within subpoena in equity upon the within named defendant, the American-European Trading Corporation, by exhibiting to Leon Grumet as President of said corp., at #22 White St., N. Y. City, the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

Dated, March 11, 1920.

107

I HEREBY CERTIFY that on the 10th day of March, 1920, at the City of New York, in my district, I personally served the within subpoena in equity upon the within named defendants, David Costaguta, Marcos A. Algiers, Alejandro Sassoli and Eugenio Ottolenghi, by exhibiting to Leon Grumet as agent and attorney in fact for said defts. at #22 White St., N. Y., the within original, and at the same time leaving with him a copy thereof.

THOMAS D. McCARTHY,
United States Marshal,
Southern District of New York.

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Dated, March 20, 1920.

The foregoing returns of the Marshal are attached to the subpoena.

Rule Nisi.

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IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.
ALGIERS, ALEJANDRO SASSOLI,
EUGENIO OTTOLENGHI, indi-
vidually and as copartners in
business composing the copart-
nership of David Costaguta &
Company, Renado Taffell, and
the American-European Trad-
ing Corporation,
Defendants.

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UPON the bill of complaint filed herein in the
office of the Clerk of this Court and the annexed
affidavit of Henry S. De Rees, verified the 10th day
of March, 1920,

LET the defendants, and each of them, show
cause before this Court, at a Stated Term thereof,
to be held for the hearing of motions, in the Federal
Court House in the Post Office Building, in the
City of New York, Borough of Manhattan, on the
19th day of March, 1920, at 10 o'clock A. M. of said

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day, or as soon thereafter as Counsel can be heard, why an order should not be made and entered in the above-entitled action which shall direct:

113 FIRST: That a receiver *pendente lite* be appointed herein of all of the property, assets and effects, of whatever kind, character, nature or description and wherever situated, of the copartnership composed of the plaintiff and the partnership of David Costaguta & Company, and of all of the property, assets and effects of the partnership of David Costaguta & Company, composed of the said David Costaguta, Marcos Algiers, Alejandro Sassoli and
 114 Eugenio Ottolenghi, which are or have been commingled with the assets of said copartnership, and of all of the property, assets and effects of the defendant American-European Trading Corporation and of the capital stock thereof, and regardless as to whether the said capital stock or any of the property of any of the defendants or of said copartnership is held in the name of said defendants, or in the name of any other person, firm or corporation for them; that said receiver take, hold and administer the property of and liquidate the affairs of the said copartnership; that said receiver take and hold, subject to the further order and judgment of this Court, the property, assets and effects of the said David Costaguta & Company and the American-European Trading Corporation, into which the property, assets and effects of the said copartnership shall be traced, and take and hold, subject to the like order and judgment of this Court, such property and effects, held by each and all of the defendants, to answer to any judgment that may be rendered against them in this suit.

SECOND: That the plaintiff and each and all of the defendants herein, their agents, servants and employees, and each and every other person, firm or corporation having possession, custody or control of any of the property of the said copartnership, or of the property of any of the defendants, in which the same may be converted or commingled, be directed to deliver the same to said receiver, and that all of the defendant copartners and each other person, firm or corporation defendant holding any such property be restrained and enjoined during the pendency of this suit, or until the further order and judgment of this Court, from in any manner, or in any form whatsoever, transferring, assigning or disposing of any of the property of said copartnership, otherwise than to deliver the same to said receiver. 116

AND it appearing to the satisfaction of this Court that the defendants have disposed, and that there is imminent danger that they will continue to dispose of the property of the copartnership and the property of the defendants in which the property of the copartnership has been commingled, as well as their own property now within the jurisdiction of this Court, in derogation of the rights and remedies of the plaintiff, it is hereby

ORDERED, that the defendants David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, individually and as copartners composing the firm of David Costaguta & Company; Leon Grumet, as the agent and attorney in fact of the said David Costaguta & Company; the defendant Renado Taffell; the servants, agents or attorneys 117

Rule Nisi.

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of the said David Costaguta & Company, or of the individual members thereof, the American-European Trading Corporation, its officers, agents, servants and employees, or any other person, firm or corporation having possession, custody and control of any of the property of the copartnership composed of the plaintiff and said David Costaguta & Company, or having possession, custody and control of the property of the said defendant American-European Trading Corporation, be and they hereby are jointly and severally enjoined and restrained, pending the hearing and determination upon the return of this rule *nisi*, from in any manner or form whatsoever, interfering with, assigning, transferring or disposing of, or removing from the jurisdiction of this Court, any property of any kind, character, nature or description whatsoever, and wheresoever situate, belonging to the defendants or either of them, or belonging to the said copartnership. And further sufficient cause appearing therefor,

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LET SERVICE of this rule *nisi*, together with a copy of the bill of complaint and the affidavit hereto annexed, on such of the defendants as may be found within this District on or before the 13th day of March, 1920, be deemed sufficient.

120 Dated. New York, March 10th, 1920.

LEARNED HAND,
United States District Judge.

A true copy of an order issued March 10th, 1920.

(Seal) ALEX. GILCHRIST, JR.,
Clerk.

Affidavit of Henry S. De Rees.

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IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

HENRY S. DE REES,
Plaintiff,

against

DAVID COSTAGUTA, MARCOS A.
ALGIERS, ALEJANDRO SASSOLI,
EUGENIO OTTOLENGHI, indi-
vidually and as copartners in
business composing the copart-
nership of David Costaguta &
Company, Renado Taffell, and
the American-European Trad-
ing Corporation,
Defendants.

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STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:
SOUTHERN DISTRICT OF NEW YORK, }

HENRY S. DE REES, being duly sworn, deposes
and says:

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I. That he is a citizen of the United States, hav-
ing been born in Blueearth County, State of Min-
nesota, on the 16th day of May, 1874, and that he
now resides at Glen Ridge, in the State of New

Affidavit of Henry S. De Rees.

Jersey, and has been a resident of the City, County and State of New York for many years prior to the 15th day of May, 1919.

II. That your deponent for many years, has been engaged as a merchant in the purchase and sale of hosiery, both in the United States and in foreign markets, principally in South and Central America, and that he is now engaged in the business of buying and selling hosiery and that he has an office and place for the transaction of his business in the City and County of New York, District aforesaid.

125 III. That in or about the month of April, 1915, your deponent entered into a contract of copartnership with one David Costaguta and Marcos A. Algiers, who then were copartners in business under the firm name and style of David Costaguta & Company, and engaged in general merchandising in the City of Buenos Aires, Republic of Argentine. That the said David Costaguta then was and now is a citizen and subject of the Kingdom of Italy, and a resident of the City of Buenos Aires, Republic of Argentine, and that the said Marcos Algiers then was and now is a citizen of the Republic of France and a resident of the City of Buenos Aires, Republic of Argentine.

126 IV. That in and by said contract thus entered into between your deponent and said David Costaguta & Company, as thus constituted, it was provided that a copartnership shall be and thereby was established and created for the purpose of buying and selling hosiery, said copartnership business to

be conducted in the name and upon the premises of said David Costaguta & Company, in the City of Buenos Aires, Republic of Argentine, and elsewhere, as may be agreed upon, the said David Costaguta & Company to contribute from time to time, and as the same might be required, all of the capital necessary to conduct the said business, and your deponent was to have entire control and direction of the conduct and management of the said business, the purchase and sale of its merchandise and the profits earned in said business were to be divided equally and the losses sustained and borne in the same proportion.

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V. That your deponent has conscientiously searched among all of his papers and effects for his copy of said copartnership agreement, but has been unable to thus far locate the same, and verily believes that the same is among certain of his effects deposited in the City of Buenos Aires, Argentine, but that the terms and conditions of said agreement as hereinbefore averred, are accurately alleged in substance and effect.

VI. That said copartnership continued uninterrupted from about the month of April, 1915, to and including the 31st day of October, 1917, during which period the said copartnership engaged in large and lucrative transactions and resulted in earning large profits and in accumulating a large and valuable stock of merchandise.

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VII. That in or about said month of October, 1917, and as of the 31st day of said month, the said

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firm of David Costaguta & Company was reconstituted by the admission therein, as partners, the defendants Alejandro Sassoli and Eugenio Ottolenghi, the former of whom then was and now is a citizen and subject of the Kingdom of Italy and a resident of the City of Buenos Aires, Republic of Argentine, and the latter of whom then was and now is a citizen of the Republic of Argentine and a resident of the City of Buenos Aires. That as a result of the dissolution of the prior partnership of David Costaguta and the creation of the new partnership by the admission of the additional partners therein, the copartnership between your deponent and the old partnership of David Costaguta & Company was dissolved, and a new contract of copartnership was duly made and entered into between your deponent and the said firm of David Costaguta & Company, as thus reconstituted, in the City of Buenos Aires, Argentine Republic, dated November 1st, 1917, wherein and whereby, in substance and effect, it was agreed, as follows:

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(a) That a special section, business and enterprise shall be established, to be conducted on the premises and in the name of David Costaguta & Company, in the City of Buenos Aires, Argentine Republic and elsewhere, as may be agreed upon, for the purchase and sale of hosiery, and any other articles of knit goods or any other kind of merchandise which it may, by mutual accord, be agreed to buy, sell or deal in, said special section to be known and called the "Hosiery Section."

(b) That your deponent was to have the exclusive charge of and the right to make all the pur-

chases of the merchandise dealt in, except, that the said David Costaguta & Company reserved the right to require your deponent to submit for approval all purchases that he made while in Buenos Aires, but that as to all purchases your deponent made while in North America or Europe he was to have complete liberty of action within the limits which said David Costaguta & Company may fix in writing.

(c) That your deponent shall have exclusive charge of the sale of said merchandise purchased in the business of said copartnership, said David Costaguta & Company reserving the right only to pass upon the credits and terms of sale. 134

(d) That only such expenses shall be charged to the business of said copartnership as directly belonged to it, that is to say, the salary of its own employees directly and exclusively concerned in the conduct of its business, travelling expenses, commission paid to brokers, telegrams, postage and such other incidental expense directly connected with the business of said copartnership, whereas, it was agreed that the expense of rent, light, heat, licenses, taxes, salaries of bookkeepers, clerks or accountants engaged in and about the keeping of the books, records and accounts of said copartnership, porters and laborers who handle, pack, unpack, load and unload, carry or otherwise handle the merchandise of the copartnership, shall be charged exclusively to the individual account of said David Costaguta & Company. 135

(e) That on the 31st day of October in each year, the accounts and transactions of said copart-

nership shall be balanced, and the profits or losses, as the case may be, shall then be ascertained and determined, and in so doing such depreciation in the market value of the merchandise shall be made as may be mutually agreed upon and as shall be found to be convenient or necessary to be made, and such bad or doubtful debts shall be charged off as may, by mutual accord, be agreed upon.

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(f) That from the net profits so mutually ascertained there shall be deducted and paid to said David Costaguta & Company, a sum equal to 6% per annum interest on the amount of the net capital supplied by David Costaguta & Company to and actually used by, the copartnership in the business of the said Hosiery Section, said interest calculations and ascertainment of and capital employed to be made semi-annually by a semi-annual account current evidencing all advances and disbursements made by David Costaguta & Company to or for the benefit of the copartnership and all moneys received by the said David Costaguta & Company belonging to said copartnership together with interest at 6% per annum debited on said advances and credited on said receipts, and in case the profits at the end of any one year are insufficient to repay to said David Costaguta & Company the net amount of said capital advanced and so ascertained, that then said balance shall be carried over into the succeeding balance.

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(g) That all net profits so mutually ascertained and determined as hereinbefore averred in subdivision (f) of this affidavit, shall be divided 55%

thereof to the said David Costaguta & Company and 45% thereof to your deponent, and all losses incurred shall be divided, sustained and borne in the same proportion.

(h) That your deponent shall be entitled to draw and be paid monthly, from the funds of said copartnership, a sum equal to 1500 Argentine pesos, which shall be charged to his personal account and he shall, in addition thereto, be entitled to draw and be paid from time to time 50% of his share of all such net profits as and when ascertained and determined, leaving 50% of his net profits on deposit with said David Costaguta & Company, on which it was to pay your deponent 6% interest per annum; and which deposit they were to hold as security, so far as provided for under the terms of the contract, and to be utilized by it as capital advanced to the copartnership and to be accounted for and paid over to your deponent at and on the termination of said contract relation.

(i) That your deponent shall devote his undivided time and attention to the business of said copartnership and he will not directly or indirectly, participate in any other commercial business nor shall he be interested in any other commercial business foreign to the business of the said copartnership; and in the event of a breach upon the part of your deponent of this provision of said contract, the said David Costaguta & Company reserved the right to declare forfeited the profits earned by your deponent in the fiscal year in which said breach of this covenant occurred.

(j) That both parties reserved the right, upon three months' written notice by registered mail, to terminate said copartnership and revoke said contract, and in the absence of your deponent from Buenos Aires said David Costaguta & Company, should they desire to terminate said contract, will do so by cable, addressed to your deponent at the last address indicated by him.

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(k) That in the event your deponent or said David Costaguta & Company elected to and did terminate said copartnership and revoke said contract, either of said parties had the right to demand that the affairs of said copartnership shall be jointly liquidated by the sale of the merchandise on hand, in the Custom House, in transit, or in course of manufacture and pertaining to the business of said copartnership, and your deponent agreed to continue his co-operation, so far as necessary, in and about said liquidation up to the time when all of the said merchandise shall have been entirely sold, at which time adjustments were to be made as to the value of merchandise taken over, if any, or bad debts, as might be fixed by mutual accord, as in case of the ascertainment of profits under the provisions of annual settlements as hereinbefore set out in sub-division (e) of this paragraph, and

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thereupon said David Costaguta & Company were to take over and become the sole owner of all of the assets of the copartnership, paying to your deponent the sum realized as the result of said liquidation, to which your deponent is entitled in said copartnership property so liquidated, in four equal installments; the first installment immediately in

cash and the remaining three installments in six, twelve and eighteen months thereafter, together with interest thereon at 6% per annum.

(l) That in the event either party shall terminate said copartnership and revoke said contract by notice and in the further event a liquidation of the said merchandise and property of the said copartnership is not demanded by either party as provided by the article of said contract numbered 11, as averred in sub-division (k) of this paragraph, and the said David Costaguta & Company desire to become the sole owner of the business of the said copartnership and its assets without liquidation, then and in those events, a balance shall be mutually arrived at and determined as provided in Article "5" of said contract and as averred in sub-division (e) of this paragraph, relative to adjustment of merchandise values and credits, and the said David Costaguta & Company shall thereupon take over all of the assets and assume all of the liabilities and pay to your deponent the amount so found to be due to him in four equal installments, the first immediately in cash and the remaining three installments in six, twelve and eighteen months thereafter together with interest thereupon at 6% per annum.

(m) That in the event of the death of your deponent the said David Costaguta & Company being the surviving partner, shall thereupon liquidate the entire stock of merchandise of the copartnership within one year from the day of such death, and close and balance the accounts thereof, and pay to

the heirs of your deponent the amount so found to be due to him in four equal installments, the first immediately in cash and the remaining three in six, twelve and eighteen months thereafter, together with interest at 6% per annum.

(n) That in order to avoid possible confusion it was agreed that the business of said copartnership was to have no relation to the production of hosiery of the factory of David Costaguta & Company known as "La Tejedora."

149 That hereto annexed, marked Exhibit "A," is a copy of the said contract transcribed in Spanish, the language in which the said contract was made, together with a translation thereof into English, marked Exhibit "B," both of which are herein referred to with the same force and effect as though herein set out *in extenso*.

150 VIII. That on the said 1st day of November, 1917, the reconstituted partnership of David Costaguta & Company assumed all of the liabilities and took over all of the assets of the prior partnership of David Costaguta & Company, and the said new partnership of David Costaguta & Company, under date of November 1st, 1917, duly published and declared the dissolution of the old firm and the assumption by the new firm of the liabilities, and the taking over of all of the assets of the old firm, as appears more particularly by a copy of said publication and notice, which is hereto annexed, marked Exhibit "C," together with the English translation thereof marked Exhibit "D," and to which refer-

ence'is herein made with the same force and effect as though herein set out *in extenso*.

IX. That the copartnership established and created between your deponent and the firm of David Costaguta & Company as then reconstituted and as evidenced by said contract Exhibit "A," hereto annexed, duly assumed all of the liabilities of the copartnership theretofore existing between your deponent and the said David Costaguta & Company as then constituted, and took over all of the assets thereof. That on the 1st day of November, 1917, the merchandise then on hand and so taken over aggregated in value the sum of 302,332.18 Argentine pesos, and there was to the credit of your deponent in his capital account a cash balance of 31,253.99 Argentine pesos. That, in addition to the merchandise then on hand, there were large outstanding contracts for the purchase of merchandise deliverable in the future and which was delivered to said copartnership subsequent to the 1st day of November, 1917.

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X. That all of the books, records, documents and accounts of the transactions of the business of the copartnership, both under the contracts of April, 1915, and November 1st, 1917, were kept by the said David Costaguta & Company in the City of Buenos Aires by its bookkeepers and accountants, and all of the books, records and documents relating to the transactions of the business of said copartnership pursuant to said contract of November 1st, 1917, are now in the City of Buenos Aires, in the possession, custody and control of the said David

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Costaguta & Company, except the books, records and documents with reference to some of the transactions of said copartnership in the City of New York, and to which reference will hereafter be more particularly made.

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XI. That on or about the 28th day of November, 1917, your deponent, in furtherance of the business of the said copartnership, left the City of Buenos Aires and arrived in the City of New York on the 28th day of December, 1917, since which date he has continuously resided in the United States, and has been engaged in the business of the copartnership until the termination of the contract as hereinafter stated. That since deponent's departure from the City of Buenos Aires he has had no inspection or examination of the books, records and documents of the said copartnership, as kept by the said David Costaguta & Company, in the City of Buenos Aires, otherwise than that your deponent has, from time to time, and as hereinafter more particularly alleged, received statements from said David Costaguta & Company relating to some of the fiscal transactions of the business of said copartnership. That while your deponent was in Buenos Aires and for a few months subsequent to his arrival in the City of New York, it was the custom and practice of the said David Costaguta & Company to furnish your deponent with daily statements evidencing the detailed record of the sales made by the said copartnership in the conduct of its business, but that since about the month of September, 1918, said David Costaguta & Company has failed, refused and neglected, although frequently

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demanding so to do, to furnish your deponent with details of such sales. That the said David Costaguta & Company, although frequently demanded by your deponent so to do, have likewise failed and refused and neglected at any time subsequent to the 1st day of November, 1917, to furnish your deponent with the semi-annual account current of receipts and disbursements and calculations of interest evidencing the capital claimed to have been advanced by the said David Costaguta & Company in the conduct of the said business, as provided for by Article 5 of said contract Exhibit "A," hereto annexed, and your deponent has at no time since said 1st day of November, 1917, had or received from said David Costaguta & Company, or from any other source, any knowledge or information as to the details of the fiscal accounts and transactions of the said copartnership or of your deponent's individual account therewith, except as hereinafter more particularly alleged.

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XII. That from said 1st day of November, 1917, to and including the 31st day of November, 1918, your deponent, on behalf of the said copartnership, purchased in the United States merchandise of the value in excess of 2,000,000 Argentine pesos, which, with the merchandise on hand on November 1st, 1917, of the value of 302,332.18 Argentine pesos and the merchandise delivered upon contracts entered into prior to the 1st day of November, 1917, was in large part sold by your deponent during that year in Argentine and elsewhere, realizing large profits and leaving on hand unsold in the City of Buenos Aires on the 31st day of October, 1918,

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merchandise of the value of not less than 1,321,923.26 Argentine pesos.

161 XIII. That on or about the 31st day of January, 1919, your deponent received from the said David Costaguta & Company, from the City of Buenos Aires, a letter hereto annexed, marked Exhibit "E," together with a translation thereof marked Exhibit "F," and to which reference is herein made with the same force and effect as though herein set out *in extenso*. That there was inclosed with said letter a statement of the so-called profit and loss account of said copartnership as of October 31st, 1918, and with reference to the transactions of the said copartnership for the year 1917 to 1918, which is hereto annexed, marked Exhibit "G," together with the translation thereof marked Exhibit "H," to which reference is made with the same force and effect as though herein set out *in extenso*. That said statement purports to debit said account with the value of the merchandise on hand belonging to the said copartnership on and as of the 1st of November, 1917; the merchandise thereafter purchased and received, commissions paid for the sale of merchandise, expenses incurred in Buenos Aires and New York, bad debts, interest on the capital advanced by David Costaguta & Company, and
162 other items aggregating a total of 2,731,795.23 Argentine pesos, and crediting said account with the total sales made in said period aggregating 1,626,202.04 Argentine pesos, to which, in addition to other items, there is added 1,321,993.26 Argentine pesos, as representing the value of the merchandise on hand on and as of the 31st day of Oc-

tober, 1918, making a total of credits of 2,974,866.40 Argentine pesos, leaving a balance between the debits and the credits of 243,270.17 Argentine pesos as representing the profits claimed to have been realized in the conduct of said business during said period, of which 55% thereof or 133,798.59 pesos are credited to the said David Costaguta and 45% thereof, to wit, 109,471.58 Argentine pesos, are credited to your deponent. That otherwise than said letter and said statement, your deponent at no time received from said David Costaguta & Company any information as to the fiscal transactions of said copartnership during said period. That, although your deponent frequently demanded a detailed statement of all of the receipts and disbursements and a detailed statement of the sales covering said period, the said David Costaguta & Company never furnished the same to your deponent, and refused and neglected so to do. That your deponent objected to the balance and ascertainment of the profits as shown in said statement Exhibit "G." and objected and protested to the method and manner in which said statement was rendered and the balance arrived at; that he objected and protested to the items, among others, appearing upon the debit side of said statement of commissions paid to representatives aggregating 32,886.09 Argentine pesos; the item representing expenses in Buenos Aires and New York aggregating 57,840.24 Argentine pesos, the item representing interest on the capital advanced to the said copartnership by the said David Costaguta & Company, aggregating 39,745.59 Argentine pesos, demanding the detailed items thereof, but the said David Costaguta & Com-

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pany failed and refused so to do. That said statement of said profits was not mutually arrived at or ascertained in accordance with said contract.

- 167 XIV. That also with said letter Exhibit "E" and said profit and loss statement Exhibit "G," as hereto annexed, there was enclosed a statement of your deponent's alleged personal account, which is hereto annexed, marked Exhibit "I," together with the translation thereof, marked Exhibit "J," to which reference is herein made with the same force and effect as though herein set out *in extenso*. That said statement purports to charge your deponent with divers sums claimed to have been received by him or advanced for his account during the period between November 1st, 1917, and October 31st, 1918, including the sum of 54,735.79 Argentine pesos, one-half of the alleged balance representing your deponent's share in the profits of said business realized that year, making a total of charges and withdrawals, including said alleged profit of 146,148.26 Argentine pesos. That said so-called personal account was credited with the cash capital of your deponent on the 1st of November, 1917, to wit, the sum of 31,253.99 Argentine pesos, divers sums, including your deponent's expenses incurred in the City of New York, and the sum of 109,471.58 Argentine pesos, representing his alleged profits during that year, making a total of credits of 161,700.73 Argentine pesos, leaving a balance to your deponent's capital account of 15,552.47 Argentine pesos, from which was deducted 14,025.57 pesos, representing the total profits realized on certain sales made by your deponent in the City of
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New York, leaving a net balance of 1,526.91 pesos.

That your deponent objected to said statement of his so-called personal account and protested against the inclusion therein of numerous items and to the balance as therein stated, but that no corrections of said account were made by the said David Costaguta & Company, nor were any of said items changed or altered to meet the objections and protests made by your deponent.

XV. That in or about the month of January, 1918, your deponent opened an office and place for the transactions of the business of the copartnership at No. 395 Broadway, in the City of New York, in the Borough of Manhattan, and thereafter in the following October removed said office and place of business to No. 22 White Street, in said City, which continued to be and was the place of business of said copartnership until the events as hereinafter alleged. That during the period between October 31st, 1918, and October 31st, 1919, your deponent purchased large quantities of merchandise in the United States for the benefit of said copartnership and placed said merchandise as the same was delivered, in the premises of the copartnership in New York City and in warehouses in said City, and there was on hand unsold on said last mentioned day merchandise of the value of about \$750,000. That there was also at said time due to the said copartnership on contracts large quantities of merchandise not yet delivered. That of the merchandise purchased during said period approximately \$500,000 thereof was shipped to the copartnership for sale in Argentine, Bolivia, Chili, Uruguay and

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elsewhere, most of which your deponent believes has been sold and large profits realized therefor. That upon the merchandise sold by your deponent in the City of New York during said year and subsequent thereto, net profits aggregating about \$125,000 was realized. That all of the merchandise sold by your deponent in the City of New York except as hereinafter alleged, was sold in the name of David Costaguta & Company, and the proceeds thereof received by it for the benefit of said copartnership.

- 173 XVI. That in or about the month of April, 1918, the said David Costaguta & Company sent a representative, one Gillespie Brunago, to the United States, where he arrived in the City of New York on or about May 15th, 1918; that said David Costaguta & Company, contrary to the contract, Exhibit "A," hereto annexed, invested him, by power of attorney, with authority to supersede and displace your deponent in the active conduct and management of the business of the copartnership. That the said Brunago assumed to and did control, supervise, hamper and impede your deponent in the purchase and sale of the merchandise of the copartnership; that he assumed to and did instruct and direct the employees thereof, contrary to the instructions and directions given them by your deponent; that he endeavored to cancel and rescind contracts made by your deponent with manufacturers for the sale and delivery of merchandise which had been entered into with the full approval and knowledge of the said David Costaguta & Company, and that he sold merchandise over the pro-
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test and objection of your deponent, necessitating that your deponent cancel said sales and refuse to make deliveries. That the said Brunago opened books of account of the transactions conducted by said copartnership in the City of New York, but that said books of account were improperly kept, did not accurately record such transactions, and such books were so badly kept that it became necessary, about the first of June, 1919, to have all of said books of said copartnership re-written in order that they might truly record the transactions of said copartnership. That your deponent protested to the said David Costaguta & Company regarding the acts and conduct of the said Brunago, with the result that finally, in September of 1918, the said Brunago was discharged and left the employ of the said copartnership. That during the period when said Brunago was in the employ of said David Costaguta & Company he was also engaged in transactions of business for said David Costaguta & Company respecting other branches of their business, and did not devote his time exclusively to the business of the copartnership in which your deponent was interested.

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XVII. That in or about the month of May, 1919, the defendant Eugenio Ottolenghi, arrived in the City of New York and advised your deponent that, on behalf of David Costaguta & Company, he intended to sell and dispose of all of the merchandise of the said copartnership; that the said David Costaguta & Company had invested in the business of said copartnership more capital than it wished to employ therein, and that said merchandise must be

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sold regardless of the prices realized therefor, and instructed your deponent to dispose of said merchandise at the best price obtainable, regardless of the interests of your deponent, or as to whether said merchandise realized a profit or not. That shortly prior to the arrival of the said Ottolenghi in the City of New York, your deponent was taken seriously ill with influenza and remained confined to his bed and home until about the 1st day of June, 1919, during which period the said Ottolenghi sold large quantities of the merchandise of said copartnership below cost and at large losses to said copartnership, and your deponent. That upon the return of your deponent to the business of the copartnership he protested and objected to the sacrifice of said merchandise by said Ottolenghi and deponent refused to permit any more of said merchandise to be sold at a loss, and insisted that the property of the copartnership should be sold in regular course of trade at market values, in order to realize the large profits that could be made thereon if the same were sold in the regular course of business, and accordingly from then on and until the termination of said copartnership contract none of the merchandise of the said copartnership was sold, except at a profit, and large profits were realized, except in one or two instances of comparatively no importance. That the said Ottolenghi assumed to and did, over the protests of your deponent, cancel contracts for the purchase of merchandise made by your deponent in the name of the said copartnership, the purchase of which it had knowledge of and had approved, resulting in the fact that litigations were instituted, causing losses to the said copart-

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nership, which were totally unnecessary and could have been avoided.

XVIII. That at no time did your deponent receive from said David Costaguta & Company any details of the sales made by it in the conduct of the business of the said copartnership in Buenos Aires for the year beginning November 1st, 1918, and ending October 31st, 1919, although your deponent frequently demanded the same, nor did your deponent receive from said David Costaguta & Company any reports, statements or accounts of the fiscal transactions in Buenos Aires of said copartnership for that period, and has never, although frequently demanding the same, received the semi-annual account current provided for by said contract, evidencing the amount of capital alleged to have been advanced by the said David Costaguta & Company, or the interest on said capital.

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XIX. That the said Ottolenghi during all of the time when he was in the City of New York, assumed to and did interfere with, impede and supersede your deponent in the active conduct, management and direction of the business of the said copartnership. That he refused to pay or permit the said David Costaguta & Company to pay many of the bills for the purchase of merchandise made by your deponent, necessitating in frequent instances threats of suits and actions at law by said creditors before said purchases were paid for, and several of the factories and mills with whom the said copartnership had contracts for the sale and delivery of merchandise to be delivered in the future cancelled

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said contracts and refused to make further shipments by reason of the failure of the said Ottolenghi to pay for said merchandise on the due date, with the result that said copartnership suffered large and substantial losses by reason of such cancellation of said contracts. That the said Ottolenghi frequently threatened to close up said place of business of said copartnership, discontinue the sale of merchandise therein, and refused to advance to your deponent necessary moneys or pay him for the expense to which he was put in the conduct thereof, and otherwise created a feeling of hostility and friction which made it impossible for your deponent to conduct the said business to the best interests of the said copartnership.

XIX. That by reason of said situation as hereinbefore alleged, your deponent did on the 22nd day of August, 1919, notify the said David Costaguta & Company at Buenos Aires, and give 90 days formal written notice terminating said copartnership, to take effect on and as of the 22nd day of November, 1919. That on the 19th day of September, 1919, the said David Costaguta & Company accepted the termination and cancellation of said contract and thereafter on the 10th day of November, 1919, your deponent elected to and did demand a complete liquidation of all of the merchandise belonging to the said copartnership pursuant to Article 11 of said contract (Exhibit "A" hereto annexed), and gave to said David Costaguta & Company formal written notice to that effect, to which on November 14th, 1919, said David Costaguta & Company formally agreed in writing. That hereto annexed.

marked Exhibit "K," is a copy of the letter addressed by your deponent to said David Costaguta & Company electing a complete liquidation of said merchandise, and hereto annexed, marked Exhibit "L," is the letter of the said David Costaguta & Company agreeing to said liquidation.

XX. That on the 22nd day of November, 1919, the date when the copartnership terminated pursuant to the notice theretofore given by your deponent, there was on hand and unsold in the City of New York merchandise of the value of about \$100,000. That at said time your deponent had made contracts for the sale of merchandise which had not yet been purchased by said copartnership and which it was necessary for said copartnership to purchase in order to fulfill its said contracts of sale. That although deponent frequently requested the said David Costaguta & Company to permit your deponent to purchase merchandise necessary to fulfill outstanding contracts, the said David Costaguta & Company refused to permit your deponent so to do, and your deponent was compelled to individually purchase merchandise necessary to fulfill some of said contracts and delivered the same at losses to himself.

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XXI. That the said David Costaguta & Company refused to permit your deponent to sell said merchandise remaining on hand after the termination of said contract in the regular course of trade and at the best prices obtainable therefor, and over the protests and objections of your deponent instructed

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and demanded that he sell the same at any price that could be realized therefor, and large quantities of merchandise were sold at little or no profit, and in some instances at a loss and far below the market value then ruling for merchandise of the same kind and character.

191 XXII. That during the period between the 22nd day of November, 1919, and the 1st day of February, 1920, or thereabouts, the said copartnership had to its credit in bank in the name of said David Costaguta & Company large funds and large outstanding accounts due to it for the sale of merchandise theretofore and in that period made, and the said David Costaguta & Company, on transactions disconnected with the business of the copartnership in which your deponent was interested, likewise had large funds on deposit to its credit in the City of New York, and that the funds of said copartnership in which your deponent is interested were commingled with the funds of the said David Costaguta & Company by them arising out of transactions other than those of the copartnership, all of which were deposited, in various amounts and at various times, in the National City Bank, The Foreign and American Banking Corporation, The Citizens Central National Bank, the Italian Discount & Trust Company, and the Guaranty Trust Company, all of
192 the City of New York, in the Southern District of New York, and in the Central Trust Company of New Jersey, in the City of Jersey City, N. J.

XXIII. That in addition to the moneys to the credit of the said copartnership and of the said

David Costaguta & Company, as aforesaid, the said David Costaguta & Company had title, possession, custody and control of large assets consisting of merchandise, other than merchandise belonging to the copartnership, among which were 9091 hides, which are now, as your deponent is informed and verily believes, stored in warehouses in the City of New York, Southern and Eastern District of New York, as follows:

1991, marked C/KF/KR, dry hides, located in the Coastwise Warehouse Company, 656 West 30th St., New York;

1000 dry hides, marked CLA, located in the warehouse as above mentioned; 194

100 wet salted hides, marked DCC, located in the same warehouse;

1000 Horse hides, located in the warehouse of H. I. Steitler, Inc., 82-84 Bank Street, in the City of New York;

3000 dry hides, located in Sullivan's Warehouse, 109 Cliff Street, New York City; and

2000 dry hides, located in the New York Dock Company, Store 249, foot of Pierrepont Street, Brooklyn, New York.

That all of said hides are, as your deponent is informed and verily believes, of the value of about \$150,000 and came into the possession of the said David Costaguta & Company by the use of the funds of the copartnership in which your deponent was interested and under the following circumstances: 195

XXIV. That said hides were purchased by Messrs. Gaston, Williams & Wigmore and others in

the City of Buenos Aires from the said David Costaguta & Company and were paid for by the purchasers. Upon the arrival of said hides in the City of New York they were rejected by the purchasers and demand made for the return of the purchase money upon the ground that the hides were not as represented. David Costaguta & Company refused to return the purchase money or take back said hides, whereupon all of the purchasers, three in number, instituted attachment proceedings against said David Costaguta & Company, in the City of New York, and levied upon all of the property of the said David Costaguta & Company and all of the property of the copartnership in which your deponent was interested, the Sheriff of the City and County of New York taking possession and remaining in possession of such property for a period of more than two weeks, tying up the liquidation of the affairs of the copartnership and the funds to its credit in its several bank accounts. Thereupon and in order to release the levy of the said attachments and to permit the continuation of the liquidation and the affairs of the said David Costaguta & Company, it applied all of the moneys in its possession representing the sales of the property of the copartnership in which your deponent was interested, together with other moneys which it raised upon loans with banks, to the discharge of said attachments and paid the claims of the purchasers of said hides, taking over the said hides and storing the same in the warehouses as above mentioned. That in all there were four separate and distinct attachment proceedings instituted against the property

of the copartnership and of said David Costaguta & Company, of which one grew out of transactions concerning the copartnership business in which your deponent was interested, and all were released by the payment in full of the claims of the plaintiffs therein by and with such commingled funds.

XXV. That in the month of January, 1919, your deponent became cognizant of the fact that the said David Costaguta & Company had conceived the fraudulent scheme and design to transfer and convey all of its property and all of the property and assets of the copartnership in which your deponent was interested to a corporation for the purpose of impeding and impairing your deponent in the prosecution of his legal rights and remedies and to prevent him from collecting from the property, assets and effects in its possession in the jurisdiction of this Court the moneys justly due to him growing out of the transactions under and by virtue of the contract of partnership (Exhibit "A" hereto annexed). That deponent had reported to said David Costaguta & Company between the 6th and 29th days of January, 1920, sales of sixty-five cases of hosiery to one Weill, Feinberg & Co., Inc., a customer of said copartnership and with whom he had been and was in negotiation for the sale thereof. That said sales to said Weill, Feinberg & Co., Inc., were never in fact consummated, and for which merchandise he had instructed the New York office of David Costaguta & Company, in whom actual custody of the same was held for the account of the said copartnership, to make out invoices to said

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Weill, Feinberg & Co., Inc., and deliver the same to your deponent, and the invoices were so made out and delivered to him, but that said invoices were never rendered by deponent to said Weill, Feinberg & Co., Inc., with whom said negotiations for said sales failed. That your deponent, being cognizant of the fraudulent scheme of said David Costaguta & Company to place all of the assets of said copartnership beyond his control and to transfer them to a dummy corporation in violation of his rights, and to prevent the same, so far as he was able, deponent took over and stored in his own name for the account of said copartnership said merchandise so invoiced to said Weill, Feinberg & Co., Inc. That your deponent has, in the regular course of trade, sold thirty-two cases of said merchandise and realized therefor the sum of \$20,840.65, said merchandise having been sold at a profit of more than \$5,000 over and above the price at which the same was billed to said Weill, Feinberg & Co., Inc., and that your deponent still holds unsold thirty-three cases of said merchandise. That all of the proceeds realized upon the merchandise so sold by your deponent and the remaining merchandise unsold by your deponent he holds for the benefit of the said copartnership, subject to an accounting and to the order of this Court, and deponent thereby tenders and offers to deliver said merchandise to a Receiver to be appointed herein, and to account for said moneys or pay the same to said Receiver, as the Court may direct, less whatever expenses were incurred by your deponent in the sale, storage and delivery thereof. That annexed to the Bill of Complaint

filed herein and marked Exhibit "A" is a complete and detailed schedule of said sixty-five cases of merchandise, indicating those still held and unsold by your deponent and those sold and disposed of, giving the names and addresses of the persons to whom said merchandise was sold and the amounts realized therefor, and reference is hereby made to said Schedule with the same force and effect as though the same were made a part hereof.

XXVI. That in or about the month of January, 1920, the said David Costaguta & Company, by and through the said defendant Eugenio Ottolenghi, in pursuance of said fraudulent scheme and conspiracy as aforesaid, caused to be incorporated on or about the 31st day of January, 1920, the defendant American-European Trading Corporation under the laws of the State of New York with dummy incorporators and dummy directors. That the authorized capital stock of the said corporation, the American-European Trading Corporation, was \$10,000, with shares of the par value of \$100 each, and the capital with which it was to begin business was stated in its Articles of Incorporation at \$500. That the number of its directors was to be and is three, who need not be nor are they actually stockholders. That the incorporators therein named, to wit, Robert Lowenstein, Sr., Arthur Delafield Smith, Vinnie I. Jones, Nathan Levy and Alexander Gritzner, agreed to take one share each of said stock in said corporation, and the directors for the first year, named in said certificate, were the said Robert Lowenstein, Sr., Arthur Delafield Smith and Vinnie I.

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Jones. That all of the capital stock of said American-European Trading Corporation is now owned and held by the said David Costaguta & Company, except the necessary qualifying shares held by some of the dummy directors and incorporators, but that such incorporators paid nothing of value for the stock so held by them.

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XXVII. That immediately after the organization of said defendant corporation the said David Costaguta & Company, in furtherance of said fraudulent scheme and conspiracy, did, on or about the 1st day of February, 1920, and thereafter, transfer, convey and set over to said defendant corporation all of the property, merchandise, assets and effects, cash in hand and in bank, belonging to the copartnership in which your deponent was interested, and as well that belonging to the said David Costaguta & Company, and, as alleged consideration for such transfers and conveyances, all of the stock of the said American-European Trading Corporation was issued and delivered to the said David Costaguta & Company. That said transfers were made by the said David Costaguta & Company to the said defendant American-European Trading Corporation without any actual consideration therefor otherwise than by the issuance by said corporation of its said capital stock. That the said David Costaguta & Company closed and discontinued all of its bank accounts and the large sums of money so withdrawn were thereupon deposited in part to the credit of the said defendant corporation and part in the name of the defendant Renado Taffell, who since said

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transfer has been discharging the same in his individual name for the benefit and account of the said respondent corporation and the said David Costaguta & Company.

XXVIII. That there is now in the possession, custody and control of the said defendant the American-European Trading Corporation, and located in the City of New York, in the Southern District of New York, twenty-two cases of merchandise consisting of hosiery, the property of the copartnership, of the value of about \$15,000, which the said David Costaguta & Company, among other assets, transferred, set over and conveyed to the said defendant the American-European Trading Corporation as aforesaid. That all of the accounts outstanding due for the sale of hosiery and made by the said copartnership, aggregating many thousands of dollars, were likewise transferred, set over and conveyed by said David Costaguta & Company to said defendant corporation. That there was likewise transferred to said defendant corporation the said 9,091 hides of the value of about \$150,000 as aforesaid which your deponent is informed and believes are now in its possession, custody and control. That the said David Costaguta & Company also transferred to said corporation a certain contract for the sale and delivery of 20,000 dozen of hosiery, of which 19,500 dozen remain undelivered, of the contract price of \$20,900, made with the Loudon Hosiery Mills of Loudon, Tennessee; a contract for the sale and delivery of 20,000 dozen of hosiery, of which 11,000 dozen remain undelivered, of the contract

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price of \$14,850, and a contract for the sale and delivery of 10,000 dozen of hosiery, of which 900 dozen remain undelivered, of the contract price of \$1,665, made with the Sweetwater Hosiery Mills of Sweetwater, Tennessee; a contract for the sale and delivery of 20,000 dozen hose, of which 12,000 dozen of the contract price of \$26,400 remain undelivered, made with the Aycock Hosiery Mills of South Pittsburgh, Tennessee; a contract for the sale and delivery of 15,000 dozen hose, of which 10,500 dozen remain undelivered, of the contract price of \$19,925, made with F. Y. Kitzmiller of Reading, Pennsylvania. A claim for the breach of a contract for the purchase and sale of hose, made with the Ellis Hosiery Company of Philadelphia, Pennsylvania, said claim aggregating about the sum of \$1,500; a claim against the Allen Hosiery Company of Philadelphia, Pennsylvania, for the breach of a contract for the non-delivery of about 7,000 dozen of hose, said claim aggregating the sum of about \$18,000. A claim for the damages for the non-delivery of 30,000 dozen hose against A. H. Rumberger of Philadelphia, Pennsylvania, aggregating the sum of \$15,000. A claim for damages for breach of warranty growing out of the purchase and sale of 2,000 dozen hose, aggregating \$2,250, against Thompson Brothers of Milroy, Pennsylvania; a contract for the sale and delivery of 22,000 dozen hose, of which 20,000 dozen remain undelivered, of the contract price of \$37,000, made with the Rockwood Hosiery Mills of Rockwood, Tennessee. A claim for the breach of a contract for the sale and delivery of 20,000 dozen hose, for failure to deliver the same, aggregating \$8,500.

against the Harriman Hosiery Mills, Harriman, Tennessee. A claim against the Colonial Knitting Mills, Inc., of Philadelphia, Pennsylvania, aggregating \$8,500, for failure to deliver 8,500 dozen hose. That all of said contracts for the purchase and sale of hose as aforesaid were made in the name of the said David Costaguta & Company and for the benefit of said copartnership, and as to a number of said contracts and claims, suits have been instituted and are pending to recover damages sustained by said partnership for the breaches of said contracts.

XXIX. That immediately after the time when the said David Costaguta & Company succeeded in making said transfers to said defendant corporation, all of which were made without the consent of your deponent, the said defendant Eugenio Ottolenghi, who, as the resident partner of said David Costaguta & Company in the City of New York, arranged and conducted said transfers and disposed of all of the property of the copartnership in which your deponent was interested, clandestinely removed his residence from the City of New York to a neighboring State and refused to come within the State of New York or within the jurisdiction of this Court, in order to enable your deponent to confer with him regarding the affairs of said copartnership, fearing that by so doing jurisdiction over his person and the partnership of David Costaguta & Company might thereby be acquired, and your deponent was unable to ascertain the place of sojourn of said Ottolenghi until your deponent learned that he had

sailed from New Orleans, Louisiana, for Buenos Aires in the latter part of February, 1920.

XXX. That prior to said Ottolenghi's departure from the jurisdiction of this Court he caused the place of business of the copartnership to be discontinued, the employees thereof discharged, the name to be erased from the premises and that of the American-European Trading Corporation substituted, and notices sent out to all persons with whom said copartnership had been doing business that said copartnership had ceased all business and that inquiries respecting same should be addressed to the defendant the American-European Trading Corporation, which would attend to the details of the completed business of said copartnership.

That simultaneously with the presentation of this affidavit for the issuance of a rule *nisi*, for which no previous application has been made, your deponent has filed in the office of the Clerk of this Court his Bill of Complaint in the above-entitled action, to which your deponent refers and makes a part of this application.

WHEREFORE your deponent respectfully prays that an order be granted herein requiring the defendants and each of them to show cause, at a time and place therein to be stated, why an order should not be made, which shall provide:

1st. That a Receiver *pendente lite* be appointed herein of all of the property, assets and effects, of whatever kind, character, nature or description and

wheresoever situated, of the copartnership composed of the plaintiff and the partnership of David Costaguta & Company, and of all of the property, assets and effects of the partnership of David Costaguta & Company, composed of the said David Costaguta, Marcos Algiers, Alejandro Sassoli and Eugenio Ottolenghi, which are or have been commingled with the assets of said copartnership, and of all of the property, assets and effects of the defendant American-European Trading Corporation, and of the capital stock thereof, and regardless as to whether the said capital stock or any of the property of any of the defendants or of said copartnership is held in the name of said defendants, or in the name of any other person, firm or corporation for them; that said Receiver take, hold and administer the property of and liquidate the affairs of the said copartnership; that said Receiver take and hold, subject to the further order and judgment of this Court, the property, assets and effects of the said David Costaguta & Company and the American-European Trading Corporation, into which the property, assets and effects of the said copartnership shall be traced, and take and hold, subject to the like order and judgment of this Court, such property and effects, held by each and all of the defendants, to answer to any judgment that may be rendered against them in this suit.

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2nd. That the plaintiff and each and all of the defendants herein, their agents, servants and employees, and each and every other person, firm or corporation, having possession, custody or control